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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FAYE SLICE,)	CV 05-191-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN JO ACTON,)	
)	
Respondent.)	
_____)	

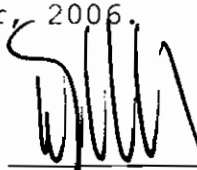
United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on November 13, 2006, in which he recommends that this action be dismissed as a second or successive application under 28 U.S.C. § 2254. Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

On September 6, 2006, Judge Lynch issued an Order finding

that the Petition for writ of habeas corpus in this case is barred by the second or successive habeas rule under 28 U.S.C. § 2244(b). Pursuant to 28 U.S.C. § 2244(b)(3), Judge Lynch instructed the Petitioner to move for an order from the Ninth Circuit Court of Appeals authorizing this court to consider the present Petition. Petitioner refused to apply to the Ninth Circuit as directed, insisting that her Petition is not a second or successive petition for purposes of 28 U.S.C. § 2244(b). Based on Petitioner's failure to comply with the statute and his Order, Judge Lynch has recommended dismissal of this case as a second or successive Petition for writ of habeas corpus. Judge Lynch also recommends denial of a certificate of appealability. I can find no clear error with the recommendation and adopt it in full.

Accordingly, IT IS HEREBY ORDERED that Slice's Petition for Writ of Habeas Corpus be DISMISSED as second or successive in violation of 28 U.S.C. § 2244(b), and that a certificate of appealability is DENIED.

DATED this 12th day of December, 2006.



Donald W. Molloy, Chief Judge
United States District Court

